

## **EXHIBIT 5**

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**From:** Abrahams, Emily  
**Sent:** Friday, August 17, 2012 12:50 PM  
**To:** Schmitt, Marshall J (35828)  
**Cc:** De Bruin, David L; Nyenhuis, Christopher E (12765); Stocco, Chantelle W (12523); Patti, Jodi K (15419); Tanck, Paul; Espinoza, Gilberto E (35802); Balber, Scott; Schapira, Lisa  
**Subject:** RE: Rockwell v. Wago

Marshall,

The bottom line is that you started depositions ten months too late, set an unreasonable schedule, and then refused to make any reasonable accommodations, including participating in a telephonic meet and confer with me. As I indicated yesterday, and in light of the fact that discovery closes in two weeks, we will be seeking relief from the Court. We will not be producing any witnesses on Monday, or on any other date unless and until the Court so orders.

Regards,  
Emily

Emily Abrahams  
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**From:** Schmitt, Marshall J (35828) [mailto:mjschmitt@michaelbest.com]  
**Sent:** Thursday, August 16, 2012 9:03 PM  
**To:** Abrahams, Emily  
**Cc:** De Bruin, David L; Nyenhuis, Christopher E (12765); Stocco, Chantelle W (12523); Patti, Jodi K (15419); Tanck, Paul; Espinoza, Gilberto E (35802); Balber, Scott; Schapira, Lisa  
**Subject:** RE: Rockwell v. Wago

Emily,

As reflected in earlier emails, the parties reached an agreement regarding the depositions scheduled for Monday. Those depositions had been rescheduled previously at Rockwell's request. This week, we agreed to again reschedule those depositions if you agreed to certain reasonable conditions. You refused to do so. I was not the one who failed to discharge the obligation to meet and confer. Rather, when I attempted to clarify what deposition we were talking about, you ignored my email until late this afternoon when you sent the email below accusing me of unprofessional conduct.

This sequence of events does not entitle Rockwell to any relief. It most certainly does not entitle Rockwell to withdraw the witnesses that it agreed to produce on Monday. If Rockwell does so, it will be the second time in less than a week that Rockwell has unilaterally deprived WAGO of proper depositions that had been scheduled by agreement. We are scheduled to talk to the court in Ohio tomorrow

regarding the Cribbs and Urdaneta depositions. Rockwell is free to seek whatever relief it deems appropriate from the court in Wisconsin regarding future depositions. In both cases, WAGO will ensure that each court understands the sequence of events that brought us before the court. The only party entitled to relief based on that sequence is WAGO, and WAGO is confident that both courts will agree.

Again, WAGO renews its offer to proceed with the alternative deposition schedule set forth in my earlier emails. WAGO will also consider any new proposal that Rockwell might offer. Finally, WAGO is prepared to proceed with the depositions on Monday as agreed. Should Rockwell choose to do so, it has the ability to have lawyers other than Paul Tanck defend the depositions at issue. In any event, withdrawing the witnesses that Rockwell agreed to produce on Monday will severely prejudice WAGO and warrant monetary and evidentiary sanctions. For planning purposes, please notify me as soon as possible how Rockwell intends to proceed.

Marshall



**From:** Abrahams, Emily [<mailto:EAbrahams@chadbourn.com>]

**Sent:** Thursday, August 16, 2012 4:07 PM

**To:** Schmitt, Marshall J (35828)

**Cc:** De Bruin, David L; Nyenhuis, Christopher E (12765); Stocco, Chantelle W (12523); Patti, Jodi K (15419); Tanck, Paul; Espinoza, Gilberto E (35802); Balber, Scott; Schapira, Lisa

**Subject:** RE: Rockwell v. Wago

Marshall,

I offered to hold a telephonic meet and confer multiple times yesterday concerning an issue that required immediate attention; namely, the inability of plaintiffs' counsel to defend two depositions at the same time this coming Monday. You refused to participate and instead – at the very time I proposed to hold the telephonic meet and confer – sent me an email asking a question, the answer to which was in the very first email Paul sent on Tuesday morning. You have made it abundantly clear that our good faith attempts to meet and confer with

you are futile. More to the point, with two weeks left before the close of discovery, there is simply no time for indulging the kind of unprofessional conduct you exhibited yesterday.

In light of the insuperable time constraints we now face as a direct result of your inexplicable failure to notice a single fact witness deposition before July, and your subsequent refusal to meet and confer in good faith, or to extend basic professional courtesies, we will not produce any witnesses for any depositions currently scheduled, including on Monday, August 20. In connection with the foregoing, we will be seeking immediate relief from the Court.

Regards,  
Emily

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**From:** Schmitt, Marshall J (35828) [<mailto:mjschmitt@michaelbest.com>]  
**Sent:** Wednesday, August 15, 2012 2:14 PM  
**To:** Abrahams, Emily  
**Cc:** De Bruin, David L; Nyenhuis, Christopher E (12765); Stocco, Chantelle W (12523); Patti, Jodi K (15419); Tanck, Paul; Espinoza, Gilberto E (35802); Balber, Scott; Schapira, Lisa  
**Subject:** RE: Rockwell v. Wago

Emily,

You are mistaken. I am not refusing to meet and confer. I understood that our emails are a part of that process along with all of the other meet and confers we have had with Paul on the matter. What I am saying is that Rockwell is failing to meet and confer in good faith by first agreeing to a schedule, reneging on that schedule, substituting in a new person with no history or connection to the prior meet and confers, and then asking to start over. We are more than willing to discuss the depositions that remain open and to consider reasonable modifications to the agreed upon schedule. We will not start the process over, however, because Paul did not purportedly know his schedule.

If you would like to talk further, please propose a schedule that is consistent with the agreed upon schedule or the alternative schedule that I have been offering for the past two days or addresses all of the concerns that I have identified. In the absence of any such proposal, there is nothing to discuss.

Marshall



**From:** Abrahams, Emily [<mailto:EAbrahams@chadbourn.com>]

**Sent:** Wednesday, August 15, 2012 12:05 PM

**To:** Schmitt, Marshall J (35828)

**Cc:** De Bruin, David L; Nyenhuis, Christopher E (12765); Stocco, Chantelle W (12523); Patti, Jodi K (15419); Tanck, Paul; Espinoza, Gilberto E (35802); Balber, Scott; Schapira, Lisa

**Subject:** RE: Rockwell v. Wago

Mr. Schmitt,

I understand from your email that you are refusing to meet and confer concerning a discovery matter that amounts to a calendaring issue. If am incorrect, you can let me know by agreeing to a meet and confer today, or at your earliest convenience. The remainder of your self-serving and inaccurate email does not merit a response.

Regards,  
Emily

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**From:** Schmitt, Marshall J (35828) [<mailto:mjschmitt@michaelbest.com>]

**Sent:** Wednesday, August 15, 2012 12:42 PM

**To:** Abrahams, Emily

**Cc:** De Bruin, David L; Nyenhuis, Christopher E (12765); Stocco, Chantelle W (12523); Patti, Jodi K (15419); Tanck, Paul; Espinoza, Gilberto E (35802); Balber, Scott; Schapira, Lisa

**Subject:** RE: Rockwell v. Wago

Emily,

Thank you for your email. Unfortunately, the process you propose, essentially starting the scheduling negotiations from scratch, is unacceptable. We have reached agreement on most of the depositions. We already have moved multiple depositions at Paul's request. What you ask is to start the process over because Paul did

not know his schedule, Rockwell chose to notice multiple depositions for August 27, and Paul insists upon taking and defending all of the depositions. None of these reasons justify redoing the entire schedule at the eleventh hour.

My previous emails lay out a schedule consistent with our extensive discussions with Paul. With all due respect, you lack the historical knowledge of those discussions. We are troubled that, after spending so much time with Paul, after he attempted to renege on the agreement of the parties, and after he interfered with the depositions scheduled for today without informing us of his role, we are suddenly introduced to a new lawyer who now will address scheduling issues.

My previous email proposes a reasonable alternative to the agreed upon schedule. If the alternative is unacceptable to Rockwell, we will need to live with the agreed upon schedule. To the extent Paul cannot be two places at once, we know of no reason, nor have you or Paul offered a reason, why a firm as large and as well known as yours cannot defend the depositions being taken by Wago.

Accordingly, unless we hear otherwise, we will proceed with the depositions as agreed. We await your response to move the Bero deposition to August 30.

Marshall



**From:** Abrahams, Emily [<mailto:EAbrahams@chadbourne.com>]

**Sent:** Wednesday, August 15, 2012 10:52 AM

**To:** Schmitt, Marshall J (35828)

**Cc:** De Bruin, David L; Nyenhuis, Christopher E (12765); Stocco, Chantelle W (12523); Patti, Jodi K (15419); Tanck, Paul; Espinoza, Gilberto E (35802); Balber, Scott; Schapira, Lisa

**Subject:** RE: Rockwell v. Wago

Dear Mr. Schmitt,

You can address your emails to me concerning this scheduling matter. We are unable to do both of the depositions on Monday because of a scheduling conflict that Paul was not aware of previously. He cannot be in two places at the same time. I have looked at the schedule of depositions and it will require flexibility on everyone's part to accommodate the schedules of both attorneys and witnesses.

I would suggest that we set up a telephone call today to resolve these ministerial scheduling matters without all of the unnecessary posturing. It seems to me that a meet and confer is in order anyhow to resolve scheduling issues in connection with Mr. Bero's deposition and the two depositions you noticed last night to take place in two different states on August 27<sup>th</sup>. At present, excluding Mr. Bero, there are three depositions scheduled for August 27<sup>th</sup>, all in different cities. In addition, I understand that a date has not yet been finalized for the deposition of Mr. Braun, which is to take place in Los Angeles. I am available today beginning at 3:30pm (EST). Please let me know when you or your colleagues are available and I will circulate a dial-in, as necessary.

Regards,  
Emily

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vCard: <http://www.chadbourne.com/vcard/eabrahams.vcf>

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**From:** Schmitt, Marshall J (35828) [<mailto:mischmitt@michaelheest.com>]